CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40860 of 2021

(Arising out of Order-in-Appeal C. Cus. I No.87/2021 dated 04.03.2021 passed by Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Chennai 600 001)

M/s.Ingram Micro India Private Ltd. **.... Appellant**
MF-7, Cipet Hostel Road,
TVK Industrial Estate,
Ekkattuthangal, Guindy,
Chennai 600 032.

VERSUS

Commissioner of Customs
(Chennai VII) **... Respondent**
New Custom House, Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

APPEARANCE :

Shri S. Murugappan, Advocate for the Appellant
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40499/2025

DATE OF HEARING : 27.01.2025
DATE OF DECISION : 06.05.2025

Per: Shri P. Dinesha

This appeal is filed against the order of First Appellate Authority who, *vide* Order-in-Appeal C. Cus. I No.87/2021 dated 04.03.2021, has upheld the differential duty demand that was confirmed in the Order-in-Original. The Original Authority *vide* OIO No.987/2020 dated 28.10.2020 did not accept the classification of "Loose Tube Optical Fibre Cables" imported by the importer and ordered re-classification of the same under CTH 9001, thereby denying the benefit of Customs Notification No.24/2005 dated 01.03.2005 to the importer. He had also confirmed the demand of differential duty together with applicable interest and ordered the finalisation of the Bill of Entry in question.

2. Shri S. Murugappan, Ld. Advocate for the Appellant/Assessee and Smt. O.M. Reena, Ld. Additional Commissioner appeared for the Respondent/Revenue.

3. In response to SCN dated 12.03.2007 wherein it was proposed to demand the differential duty, it appears that the importer had filed detailed reply thereby seriously contesting the charges/allegations *vide* its letter dated 27.08.2007. The Revenue having woken up nearly after 13 years, choose to pass the Order-in-Original dated 28.10.2020 after affording the appellant an opportunity of being heard on 29.09.2020; and the importer appears to have filed its submissions in writing, also questioning the inordinate delay in taking up the matter for adjudication. The Original Authority having considered the contentions of the importer regarding the

inordinate delay in adjudicating, apparently has attributed the same to the importer as well, for not following up with the case in its own interest.

4. At the outset, we are unable to accept the said view of the Adjudicating Authority since, when a statutory notice/SCN is issued, the noticee is duty bound to reply; there is no dispute that the SCN as well as the reply are on record. When such a reply is filed, then it is the duty of the Department through the Officer to either accept the reply and drop the further proceedings; or not to accept the reply and pass suitable order and hence, as long as the officer does not call for appearance or clarification from the noticee, the statute does not prescribe any duty on the part of such notice as alleged by the Additional Commissioner/Adjudicating Authority in the case in hand, to follow up with the officer. The blame for inaction in time on his part has been very conveniently passed on by the Additional Commissioner to the hapless appellant. Unfortunately, the said view has been accepted in *toto* by the First Appellate Authority in the impugned order.

5. Ld. Advocate drew our attention to the judgements of Hon'ble Madras High Court in **J.M. Baxi & Co. Vs GOI** – 2016 (336) ELT 285 (Mad.); **Transworld Shipping Services Pvt. Ltd. Vs GOI** – 2018 (361) ELT 176 (Mad.) and Hon'ble Bombay High Court in **Lanvin Synthetics Private Ltd. Vs UOI** – 2015 (322) ELT 429 (Bom.); **Zodiac Clothing Co. Ltd. Vs UOI** – 2023 (384) ELT 175 (Bom.) wherein, the Constitutional Courts have held that in the absence of a statutory time limit to pass an adjudication

order under Section 122 of the Customs Act, it would not mean that an adjudication order could be passed at the sweet will of the concerned officer. We find that the ratio in the said cases would clearly apply here to the facts of this case.

6. The Hon'ble Bombay High Court in **Lanvin Synthetics Pvt. Ltd.** (supra) held as under :

> **"12.** After hearing both sides, we are of the view that there is no denial of the fact that the investigations were carried out in this case way back in the year 1995. If the investigations were carried out in August, 1995, the show cause notice came to be issued on the conclusion thereof in March, 1997, then, ***we do not see any reason for the Revenue/Department not passing an adjudication order for 17 long years.*** The petitioners cannot be faulted for having approached this Court belatedly as is the contention of the Revenue. In the present case, it is the petitioners who brought to the notice of the department and repeatedly that the show cause notice is pending adjudication and that the department has retained the sum deposited. It is the petitioners who sought information by making an application under the Right to Information Act, 2005. The records were not available and there was no information available with regard to this show cause notice. The admitted position today is that the concerned Commissionerate is unable to trace the file and locate the record. It has given no explanation as to why show cause notice was not adjudicated for 17 long years. The explanation now placed on affidavit does not inspire confidence. We do not countenance the submission and as made belatedly that the department with the assistance of the petitioners will pass a adjudication order within a time frame and it deserves that opportunity. We do not find that the statements made on affidavit are enough to grant such opportunity. ***If the law postulates early end to such proceedings and there is no period of limitation prescribed, does not mean that the proceedings initiated could be concluded at the sweet will and fancies of the department.*** The department should not have blamed the petitioners for having approached this Court belatedly, but the department must appreciate that the petitioners are seeking two reliefs one is for quashing of proceedings and secondly, a direction to the department forthwith refund the deposit and with interest.
>
> **13.** We can take note of the department's objection with regard to the petitioner's approaching this Court after a lapse of several years

for return of money but certainly we cannot refuse any relief to the petitioners of quashing of the proceedings of the show cause notice once the legal principles are well settled. ***The period that has been taken in this case for adjudication of the show cause notice cannot be said to be reasonable. If within a reasonable time the proceedings have to be concluded then in the present case 17 years can never be said to be a reasonable period or time.*** The department and going by the settled legal principles, cannot pass an adjudication order on the show cause notice and as requested by Mr. Jetly.

7. The Hon'ble Bombay High Court in the case of **Zodiac Clothing Co. Ltd.** (supra) held as under :

> **"10.** Assertion of the Petitioner that the Petitioner was not informed that the file of the Petitioner was transferred to the Call Book has not been controverted. The position continued for 18 years. The fact situation where show cause notice has been transferred to the Call Book and the noticee is not informed about the pendency for an unreasonable period of time has been considered in various decisions. ***It has been held that not only it is necessary that the show cause notice should be taken to its logical end at the earliest as a matter of administrative discipline, but keeping the show cause in Call Book without informing the notice for a long period of time causes severe prejudice, as the noticee may act on the premise that the proceedings have been dropped and it is also likely that the record and proceedings are not available***. In the present case the show cause notice was kept dormant and the notice for personal appearance was issued 18 years ago. The dicta as laid down is clearly applicable to the facts of the present case. There is no dispute and cannot be any dispute regarding the above position of law laid down in these decisions. The petition was admitted and Rule was issued, and thus, the position has continued for 25 years."

8. The Jurisdictional High Court of Madras in the case **J.M. Baxi** (supra) has held in para-17 as under :

> **"17.** ***In the order of adjudication dated 7-1-2000, there is nothing to indicate as to what transpired from 23-5-1995 up to 7-1-2000, except for two dates***. One is a letter dated 23-10-1999 where the appellant sought an injury to be inflicted upon them

> voluntarily, reminding the Department of the pendency of the show cause notice. The next date is 4-1-2000 when a personal hearing took place. ***Therefore, the order of adjudication certainly had not taken place within a reasonable period. Though the statute does not prescribe a period of limitation for passing an order of adjudication, the law is well settled that anything in respect of which no period of limitation is prescribed, should be done at least within a reasonable time. What is reasonable time, would depend upon the facts and circumstances of each case. In cases of this nature, where the weight of the cargo discharged by the vessel of a Steamer Agent is questioned, it is not possible for a Steamer Agent to defend themselves against the show cause notice long after the vessel had sailed***. Therefore, the third question of law is also be answered in favour of the appellant."

9. The Hon'ble High Court of Madras in the case of **Transworld Shipping Services Pvt. Ltd**. (supra) has *inter alia* held as under:

> **"30.** Thus, from the date of discharge, it has taken 11 years for the matter to attain finality. However, it is yet to attain finality since this Writ Petition has been pending since 2004. The time taken by the first respondent/Revisional Authority cannot be stated to be either unreasonable or suffers from inordinate delay and laches, as it is little over one year only. ***However, the Court cannot shut its eyes to the delay in adjudication of the show cause notice and the delay in disposing the Appeal Petition. This has taken 10 years from the date of discharge. The facts clearly disclose that the delay is inordinate and arbitrary.***
>
> **31.** Thus, the Revenue cannot seek to distinguish the decisions referred to by the Learned Counsel for the petitioner, by contending that the show cause notice was issued well within the period of five years from the date of discharge. ***In my considered view, the time taken for adjudication is what important to be noted, and if the said time is reckoned, it has taken six years for the Authorities to complete the adjudication from the date of discharge, which is found to be unreasonable in all the decisions referred to above***. The penalty, which was imposed by the Adjudicating Authority and confirmed by the Appellate Authority was twice the shortage. On revision, the first respondent/Government of India noted that, there is nothing on record to show that the petitioner is intentionally or actively responsible to the said short landing in goods, and having

> rendered such a finding, the first respondent ought to have exercised its powers, and deleted the entire penalty. ***In other words, the first respondent was satisfied that there is no mens rea on the part of the petitioner.*** The nature of cargo, Bills of Lading, time taken for completing the discharge, where all reckoned by the first respondent/Government of India and was convinced to hold that the petitioner was not intentionally or actively responsible for the short landing.
>
> **32.** ***Therefore, I have no hesitation to hold that the inordinate delay in concluding the adjudication proceedings is unreasonable.*** Further, the Revisional Authority, Government of India, having found that, no blame can be fastened on the petitioner for intentionally being the cause for the short landing, this is a fit case, where, the entire penalty imposed on the petitioner requires to be vacated."

10. Following the judicial pronouncements of higher fora on the issue on hand, we hold that the impugned order has not been passed in time, but with inordinate delay which is not at all explained by Revenue. Consequently, the demand therefore cannot sustain. The impugned order therefore, requires to be set aside which we hereby do.

11. Resultantly, the appeal stands allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on 06.05.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

gs